

# House Conferees: Restrictions on Their Authority

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To resolve differences between House and Senate versions of a measure, Congress can establish a conference committee, composed of a House and a Senate delegation (often referred to as conferees). Its task is to propose a final version of the measure, referred to as a conference report, for the approval of both houses. This report discusses House rules that restrict the substance of what that chamber's conferees may agree to include in a conference report and how those rules are often waived in modern practice. For more information on the procedures for going to conference, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*.

## Scope Requirement

A conference committee has before it both a House and a Senate version of the same measure.<sup>1</sup> In recent practice, these most often take the form of a House measure as passed by the House and a substitute for the entire text agreed to by the Senate, or *vice versa*. Often, the substitute from the second chamber (formally, an amendment in the nature of a substitute) reflects the text of a companion measure agreed to by that chamber. (Other possibilities exist, but all involve an amendment or amendments by one house to a measure agreed to by the other.)

House Rule XXII, clause 9, authorizes House conferees to negotiate only on matters in disagreement between the houses; that is, points on which the House and Senate versions of the measure differ. This rule permits conferees to reach an agreement that constitutes a germane modification of the matter in disagreement. Conferees may, for example, propose a new amendment in the nature of a substitute as an alternative to both versions committed to conference (commonly referred to as a conference substitute). The conference proposal on each matter in disagreement must fall within the scope of the differences between the House and Senate versions. In general, this requirement means that conferees may not change or eliminate text agreed to by both houses, nor may they introduce any specific additional matter not included in either version.<sup>2</sup> Also, they may not delete matter in such a way as to broaden the scope of the measure beyond both proposals.

If the two versions contain different provisions on the same subject, conferees must in general retain a provision on that subject. They may accept either the House or Senate version, or may propose a version intermediate between the two. The conference proposal may not be stronger than the stronger version or weaker than the weaker version. If only one house has a provision on a subject, then the implicit position of the other house is that current law on the point should be maintained. The conferees may include the provision, omit it, or propose a version intermediate between it and current law.

## Violations of Authority

In recent practice, conferees often include in their report provisions that either are entirely new or otherwise violate scope requirements. A conference report containing provisions outside the scope is subject to a point of order in the House. If the Speaker sustains the point of order, the entire conference report is out of order and cannot be considered, because a conference report is a

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<sup>1</sup> For example, the measure in conference might be a House bill (H.R.) with a Senate amendment (representing its alternative) to that bill, or instead a Senate bill (S.) with a House amendment (representing its alternative) to that bill.

<sup>2</sup> *Constitution, Jefferson's Manual, and Rules of the House of Representatives, One Hundred Sixteenth Congress*, H.Doc. 115-177, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., [compiled by] Thomas J. Wickham, Parliamentarian (Washington: GPO, 2019), §1088, pp. 945-948.

package agreement. It must be considered and disposed of as a unit; it may not be amended or broken up.

In this situation, House conferees often ask the Committee on Rules to report a special rule for considering the conference report that waives the scope point of order. Alternatively, if little opposition is expected, the conference report may be called up on a motion to suspend the rules, which has the effect of waiving any points of order. The House may also waive points of order against a conference report by unanimous consent. All these procedures are also available to remedy other violations of House conferees' authority.

## **Appropriation Bills and Technical Disagreement**

For appropriations bills—measures considered annually that fund the general operations of the federal government—conferees' authority is subject to important additional restrictions.<sup>3</sup> Rule XXII, clause 5, restricts the authority of House conferees to accept Senate amendments to appropriation bills that propose to change existing permanent law (called legislative amendments) or that propose to make unauthorized appropriations. It also prohibits conferees from accepting Senate appropriations amendments to bills that are not appropriation bills. Clause 6 of Rule XXII forbids House conferees from accepting a Senate revenue amendment to a House non-revenue bill.

In current practice, the House usually considers a conference report pursuant to a special rule reported by the Rules Committee that protects the conference report from a point of order if it violates these restrictions. In the past, if conferees reached agreements that violated these restrictions, they often reported their proposals as amendments in technical disagreement.<sup>4</sup> House conferees formally reported that they could not reach agreement (a conference report in disagreement). During floor consideration of the conference report, the House conferee serving as floor manager made a motion that the House recede from its disagreement to the Senate version as amended by a new House amendment. Because these motions to recede and concur with an amendment are not subject to the restrictions applicable to conference reports, the text of the new amendment could embody the agreement that conferees had actually reached. This approach becomes inconvenient, however, when the position of one house is embodied in a single second-chamber substitute for the entire text, which has become routine even on appropriations bills.

## **Nongermane Senate Provisions**

House Rule XXII, clause 10, restricts the ability of House conferees to agree to include in a conference report provisions that originate in Senate language and are not germane to the measure as passed by the House. The rule subjects each provision of this kind to a separate point of order in the House. If the Speaker sustains the point of order, however, the conference report does not automatically become ineligible for consideration. Instead, a motion is in order on the floor to strike the nongermane matter from the conference report. Such a motion is debatable for up to 40 minutes with time equally divided between the member offering the motion and a member opposed. If one or more motions to strike are agreed to, the conference report is considered as rejected by the House. The rule then, however, provides that the House automatically proceed to

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<sup>3</sup> For more discussion of the appropriations process, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, coordinated by James V. Saturno.

<sup>4</sup> An amendment in technical disagreement refers to a situation where language exceeds the authority of House conferees to negotiate, but otherwise is not subject to any substantive disagreement between House and Senate conferees.

consider a motion to recede and concur with an amendment that consists of the unrejected portion of the conference report.

For each nongermane Senate provision in a conference report, this mechanism could permit the House to choose either to accept or reject it without killing the legislation as a whole. Similar procedures apply when Senate nongermane matter appears in an amendment reported from the conference committee in (true or technical) disagreement.<sup>5</sup> In practice, however, the House often waives points of order during consideration of a conference report, effectively insulating nongermane Senate provisions from the process described above. Points of order are routinely waived when the House approves a special rule, from the Committee on Rules, governing the consideration of a conference report. The House could also waive points of order by unanimous consent or by considering the conference report under suspension of the rules.

## Acknowledgments

This report was originally written by Richard S. Beth, a specialist on legislative procedure who has since retired from CRS. The author listed is available to answer questions from congressional clients on the topic.

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<sup>5</sup> As previously noted, language in technical disagreement refers to matters that are outside of the scope of House conferees' authority, but for which there is otherwise no substantive disagreement. In contrast, amendments in true disagreement represent matters where House and Senate conferees could not reach a mutually acceptable resolution to their chambers' different positions.

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